

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ASSOCIATION OF AMERICAN RAILROADS,

Plaintiff,

v.

DAVE YOST, *Ohio Attorney General, et al.*,

Defendants.

Case No. 2:23-cv-2096

Judge Michael H. Watson

Magistrate Judge Kimberly A. Jolson

**PLAINTIFF’S UNOPPOSED MOTION FOR, AND NOTICE OF, VOLUNTARY
DISMISSAL WITHOUT PREJUDICE OF OHIO ATTORNEY GENERAL DAVE YOST**

Plaintiff Association of American Railroads (AAR) moves under Federal Rule of Civil Procedure 21 to dismiss without prejudice Dave Yost, Ohio Attorney General, as a defendant in this action. *See, e.g., Espinosa v. First Advantage Background Servs. Corp.*, 343 F.R.D. 414, 415 (S.D. Ohio 2023) (construing notice of voluntary dismissal of one defendant as motion to dismiss under Rule 21 and granting motion). Counsel for AAR have conferred with counsel for all Defendants, and this motion is unopposed. AAR is *not* moving to dismiss the remaining defendants, members of the Ohio Public Utilities Commission.

Alternatively, AAR respectfully notifies the Court that it hereby voluntarily dismisses Dave Yost, Ohio Attorney General, as a defendant in this action. The Attorney General has not answered or filed a motion for summary judgment, and dismissal is without prejudice. *See* Fed. R. Civ. P. 41(a)(1)(A)(i).

On July 26, 2023, the Attorney General moved to dismiss the claims against him for lack of standing. Mot. to Dismiss, ECF No. 17, PageID # 104. AAR disagrees with various of the legal positions taken by the Attorney General in that motion. But it consents to dismissal of the Attorney General because his motion confirms that he “has no *independent* authority to enforce

the challenged state law.” *Id.* at PageID # 105 (emphasis added). Rather, the Attorney General “has the authority to file a collections action to collect any penalty levied by” the Ohio Public Utilities Commission “only when directed” by the Commission. *Id.* at PageID # 106. Absent such direction, “the Attorney General cannot bring a civil collections action under the clear and unambiguous language of Ohio Rev. Code § 4999.09.” *Id.* at PageID # 112. As a result, a declaration that federal law preempts the crew-size law and/or injunctive relief preventing the members of the Commission from enforcing the crew-size law would necessarily bar the Attorney General from enforcing the law as well.

Dated: August 10, 2023

Respectfully submitted,

/s/ Jonathan N. Olivito

Jonathan N. Olivito (0092169), Trial Attorney

Amy D. Vogel (0075169)

Taft Stettinius & Hollister LLP

41 S. High Street, Suite 1800

Columbus, OH 43215-4213

Phone: (614) 221-2838

Fax: (614) 221-2007

jolivito@taftlaw.com

avogel@taftlaw.com

Thomas H. Dupree Jr. (*pro hac vice*)

Jacob T. Spencer (*pro hac vice*)

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, NW

Washington, DC 20036

(202) 955-8500

tdupree@gibsondunn.com

jspencer@gibsondunn.com

Attorneys for Plaintiff AAR

CERTIFICATE OF SERVICE

I certify that on August 10, 2023, I electronically filed the foregoing with the Clerk of Court by using the Court's CM/ECF system, which will send a notice of this electronic filing to all counsel of record.

/s/ Jonathan N. Olivito

Jonathan N. Olivito